

## Missouri Attorney General's Opinions - 2004

Opinion	Date	Topic	Summary
<a href="#">54-2004</a>	Feb 3	COUNTY LIBRARY DISTRICT. COUNTY LIBRARY TAXES. CONSOLIDATION OF DISTRICTS. LIBRARY DISTRICTS. LIBRARY TAXES. REGIONAL LIBRARY DISTRICTS.	The “same rate of taxation” in Section 182.610, RSMo 2000, refers to the current rate of taxation actually in effect for each county library district that proposes to consolidate. Therefore, to consolidate pursuant to that statute, the county library districts must have the same current tax rate in effect. It is not sufficient that the districts previously had the same rate approved by voters in the past.
<a href="#">69-2004</a>	Feb 3	AMBULANCES AND AMBULANCE SERVICE. AMBULANCE DISTRICTS. MERCHANTS AND MANUFACTURERES REPLACEMENT TAX. PROPERTY TAX. SALES TAX. TAXATION; DEFINITION.	An action by an ambulance district to impose a sales tax pursuant to Section 321.552, RSMo Cum. Supp. 2002, and make an accompanying reduction in its tax rate as defined in Section 137.073, RSMo 2000, thus setting that tax rate at zero, does not interfere with the district’s entitlement to revenue from the replacement tax imposed pursuant to Article X, Section 6 of the Missouri Constitution.
<a href="#">80-2004</a>	Apr 8	CHARTER COUNTIES. COUNTY COLLECTOR. JACKSON COUNTY. TAX COLLECTIONS.	The Jackson County Collector lacks authority to waive interest or penalties assessed on delinquent real or personal property taxes.
<a href="#">82-2004</a>	Feb 5	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to amendments to various provisions of the Constitution of Missouri concerning highways and transportation (version 1).
<a href="#">85-2004</a>	Feb 13	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to amendments to various provisions of the Constitution of Missouri concerning highways and transportation (version 2).
<a href="#">87-2004</a>	Mar 25	APPROPRIATIONS.	Subject to certain limitations based on Article III, Section 23 and Article II, Section 1 of the Missouri Constitution, the General Assembly’s

			determination of the purpose for each appropriation as expressed in the plain language of the final bill is final and binding on all other state actors. The Commissioner of Administration may not certify, and the Treasurer may not pay, any expenditure of state funds except in furtherance of those purposes.
<a href="#">89-2004</a>	Feb 27	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a constitutional initiative petition relating to highways and transportation (version 2).
<a href="#">90-2004</a>	Mar 4	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of a statutory initiative petition relating to electoral reform (version 1).
<a href="#">91-2004</a>	Mar 4	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of a statutory initiative petition relating to electoral reform (version 2).
<a href="#">92-2004</a>	Mar 4	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of a statutory initiative petition relating to electoral reform (version 3).
<a href="#">93-2004</a>	Mar 4	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of a statutory initiative petition relating to electoral reform (version 4).
<a href="#">96-2004</a>	Mar 4	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a constitutional initiative petition proposal relating to highways and transportation (version 2).
<a href="#">99-2004</a>	Mar 4	INITIATIVE PETITION. INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of a constitutional initiative petition relating to highways and transportation (version 4).
<a href="#">101-2004</a>	Mar 12	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a proposed constitutional initiative petition relating to highways and transportation (version 4).
<a href="#">102-2004</a>	Mar 12	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a constitutional initiative petition relating to highways and transportation (version 4).
<a href="#">103-2004</a>	Mar 19	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 1).

<a href="#">104-2004</a>	Mar 19	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 2).
<a href="#">105-2004</a>	Mar 19	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 3).
<a href="#">106-2004</a>	Mar 19	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 4).
<a href="#">107-2004</a>	Mar 22	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for the statutory initiative petition relating to electoral reform (version 1).
<a href="#">108-2004</a>	Mar 22	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for the statutory initiative petition relating to electoral reform (version 2).
<a href="#">109-2004</a>	Mar 22	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for the statutory initiative petition relating to electoral reform (version 3).
<a href="#">110-2004</a>	Mar 22	INITIATIVE PETITION. INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for the statutory initiative petition relating to electoral reform (version 4).
<a href="#">118-2004</a>	Sept 21	COUNTY COMMISSIONERS. INCOMPATIBILITY OF OFFICES. SCHOOL BOARDS.	Under current applicable law, the offices of Camden County Commissioner and member of the School of the Osage R-II School Board are not incompatible because School of the Osage R-II School District belongs to Miller County rather than Camden County.
<a href="#">120-2004</a>	June 3	FAIR BALLOT LANGUAGE. JOINT RESOLUTIONS.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.175, RSMo, and fair ballot language prepared pursuant to Section 116.025, RSMo, concerning a proposed constitutional amendment passed by the Missouri General Assembly (Senate Joint Resolution No. 29) relating to marriage.
<a href="#">121-2004</a>	May 28	JOINT RESOLUTIONS.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment passed by the Missouri General Assembly (Senate Joint Resolution No. 29) relating to marriage.
<a href="#">126-2004</a>	June 23	FAIR BALLOT LANGUAGE.	Review and approval of the legal content and form of the proposed fair ballot language prepared pursuant to Section 116.025, RSMo, regarding the initiative petition concerning floating gambling facilities in Rockaway Beach, Missouri, on or adjacent to the White River.

<a href="#">129-2004</a>	Nov 30	SCHOOL SUPERITENDENTS. SUNSHINE BILL - SUNSHINE LAW.	A task force appointed by the Cape Girardeau School District's superintendent for the purpose of making budget proposals to the superintendent was a public governmental body within the meaning of the Sunshine Law so that meetings of the task force were subject to the requirements of the Sunshine Law.
<a href="#">135-2004</a>	Aug 20	FAIR BALLOT LANGUAGE.	Review and approval of the legal content and form of the proposed fair ballot language prepared pursuant to Section 116.025, RSMo, regarding the initiative petition relating to highways and transportation.

COUNTY LIBRARY DISTRICT:  
COUNTY LIBRARY TAXES:  
CONSOLIDATION OF DISTRICTS:  
LIBRARY DISTRICTS:  
LIBRARY TAXES:  
REGIONAL LIBRARY DISTRICTS:

The "same rate of taxation" in Section 182.610, RSMo 2000, refers to the current rate of taxation actually in effect for each county library district that proposes to consolidate. Therefore, to consolidate pursuant to that statute, the county library districts must have the same current tax rate in effect. It is not sufficient that the districts previously had the same rate approved by voters in the past.

OPINION NO. 54-2004

February 3, 2004

The Honorable Scott A. Lipke  
Representative, District 157  
State Capital Building  
Jefferson City, MO 65101

Dear Representative Lipke:

You have asked our office for an opinion concerning the meaning of the phrase "same rate of taxation" contained in the library district consolidation statute, Section 182.610, RSMo 2000. Your opinion request states that three county library districts may want to consolidate into one library district. Your request indicates that the three districts originally had the same rate of taxation as one another, when the rates were approved by voters several years ago, but they now have three different rates of taxation because they have experienced different levels of downward adjustments to their tax rate ceilings pursuant to Section 137.073, RSMo 2000.

Section 137.073, RSMo 2000, sets out the procedure for setting the "tax rate ceiling" of a political subdivision each year based on changes in assessed valuations of property. Stated generally, those procedures require a political subdivision to reduce a tax rate in a year where assessed valuation of existing property increases at a pace greater than the general rate of inflation. *See* Section 137.073.2.

Your question focuses on the interpretation of Section 182.610, RSMo 2000, which states in relevant part: "Two or more county library districts having the same rate of taxation on assessed valuation of taxable property within each district may join in creating a consolidated public library district, . . . ." Thus the issue presented by your opinion request can be stated as follows: Does the phrase "same rate of taxation" mean the tax rate that was originally voted on by the voters several years ago or does it mean the current rates of taxation in each of the library districts, which reflect the annual adjustments pursuant to Section 137.073, RSMo 2000, to account for changes in property assessments?

In interpreting statutes, the purpose is to ascertain the intent of the legislature. *State ex rel. Riordan v. Dierker*, 956 S.W.2d 258, 260 (Mo. banc 1997). In doing so, we look to the language used, giving it its plain and ordinary meaning. *Id.* The plain and ordinary meaning of "same rate of taxation," indicates that the term would mean having the same rate of taxation at the current time, not at a time in the past. Thus, a plain language reading of the phrase "same rate of taxation" indicates it means having the same rate of taxation currently, after the tax rate ceilings have been adjusted under Section 137.073, RSMo 2000, rather than meaning the same rate of taxation as originally voted on several years ago.

In addition, interpreting the phrase "same rate of taxation" in Section 182.610, RSMo 2000, to mean the current, actual rate of taxation avoids irreconcilable problems of construction. If all districts to be consolidated have the same current tax rate, it is apparent that the newly created, consolidated district would share that same rate. But if the districts have different current rates, then there would be no statutory basis or guidance for choosing which rate would apply in the consolidated district. It would not be appropriate to choose the previously shared common rate--the rate approved by voters several years ago--because doing so would mean an increase in the rate above the tax rate ceiling for voters in any of the districts that had experienced downward adjustments in that rate pursuant to the provisions of Section 137.073, RSMo 2000. Section 137.073 is worded to prevent voters from being subject to a tax rate above the tax rate ceiling established by that statute without a vote approving the increase. Choosing the lowest rate currently in force in any of the consolidating districts would avoid that problem, but again, nothing in Section 182.610 provides any basis or guidance for making that choice.

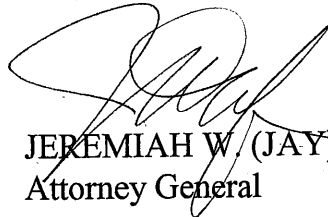
Nothing in this opinion is meant to indicate that library districts are not able to consolidate under Section 182.610, RSMo 2000, if they take appropriate measures to do so. Library districts that propose to consolidate may take steps to alter their tax rates, including submitting tax measures to voters if necessary, so that the tax rates would be the same in all of the districts at the time that they proposed to consolidate.

Honorable Scott A. Lipke  
Page 3

### CONCLUSION

The "same rate of taxation" in Section 182.610, RSMo 2000, refers to the current rate of taxation actually in effect for each county library district that proposes to consolidate. Therefore, to consolidate pursuant to that statute, the county library districts must have the same current tax rate in effect. It is not sufficient that the districts previously had the same rate approved by voters in the past.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the printed name and title.

JEREMIAH W. (JAY) NIXON  
Attorney General

AMBULANCES AND AMBULANCE  
SERVICE; AMBULANCE DISTRICTS;  
MERCHANTS AND MANUFACTURERS  
REPLACEMENT TAX:  
PROPERTY TAX:  
SALES TAX:  
TAXATION - DEFINITION:

An action by an ambulance district to impose a sales tax pursuant to Section 321.552, RSMo Cum. Supp. 2002, and make an accompanying reduction in its tax rate as defined in Section 137.073, RSMo 2000, thus setting that tax rate at zero, does not interfere with the district's entitlement to revenue from the replacement tax imposed pursuant to Article X, Section 6 of the Missouri Constitution.

OPINION NO. 69-2004

February 3, 2004

Honorable Maynard Wallace  
Representative, District 143  
State Capitol Building  
Jefferson City, MO 65101

Dear Representative Wallace:

You have requested an opinion on the following questions:

Does an entity that placed a vote before the people to go to a sales tax revenue instead of a property tax revenue, set their levy at zero for 2003, receive a part of the surtax established in 1985?  
[Are] the levy and surtax related in any way?

The surtax referred to in your opinion request is a tax on commercial real estate, imposed pursuant to Article X, Section 6 of the Missouri Constitution. That tax was adopted by constitutional amendment and replaced Missouri's personal property tax on merchandising and manufacturing inventory. Based on the information provided to us, we understand that your opinion request relates in particular to the Taney County Ambulance District, which exercised the option provided to it by Section 321.552, RSMo Cum. Supp. 2002, to adopt a sales tax and make an accompanying reduction in its property tax rate. We



further understand that the reduction resulted in the District's property tax rate being set at zero.

Accordingly, your request calls for us to determine whether a district that adopts a sales tax pursuant to Section 321.552, RSMo Cum. Supp. 2002, and as a result reduces its property tax rate to zero, should still receive proceeds from the replacement tax imposed pursuant to Article X, Section 6. For the reasons described below, we conclude that such a district should continue to receive proceeds from the replacement tax.

#### Article X, Section 6 Replacement Tax

Article X, Section 6 exempts merchants' and manufacturers' inventories from taxation. When that exemption was adopted, it did away with pre-existing taxes on such property. To replace the revenues lost because of the exemption, Article X, Section 6 imposes a tax on commercial property. Article X, Section 6.1 and .4. As the Supreme Court of Missouri has explained, the replacement tax: "[W]as calculated so that, in its first year, it provided the same amount of revenue as the old personal property tax had provided in the previous year. Thereafter, the proceeds from the tax were designed to fluctuate with changes in the assessed value of property subject to the tax." *Consol. School Dist. No. 1 of Jackson County v. Jackson County*, 936 S.W.2d 102 (Mo. banc 1996). The county clerk determines the rate for that tax, based on a calculation of the total revenue lost by all taxing authorities in the county as a result of the exemption. The county collector then divides and distributes the proceeds of the county-wide replacement tax to each taxing authority in the county according to its share of the total amount of lost revenues. Article X, Section 6.2.

Specifically, Article X, Section 6 provides:

1. . . . all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments shall be exempt from taxation; . . .

2. All revenues lost because of the exemption of certain personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments shall be

replaced to each taxing authority within a county from a countywide tax hereby imposed on all property in subclass 3 of class 1 in each county. For the year in which the exemption becomes effective, the county clerk shall calculate the total revenue lost by all taxing authorities in the county and extend upon all property in subclass 3 of class 1 within the county, a tax at the rate necessary to produce that amount. The rate of tax levied in each county according to this subsection shall not be increased above the rate first imposed and will stand levied at that rate unless later reduced according to the provisions of subsection 3. The county collector shall disburse the proceeds according to the revenue lost by each taxing authority because of the exemption of such property in that county. Restitution of the revenues lost by any taxing district contained in more than one county shall be from the several counties according to the revenue lost because of the exemption of property in each county. Each year after the first year the replacement tax is imposed, the amount distributed to each taxing authority in a county shall be increased or decreased by an amount equal to the amount resulting from the change in that district's total assessed value of property in subclass 3 of class 1 at the countywide replacement tax rate. In order to implement the provisions of this subsection, the limits set in section 11(b) of this article may be exceeded, without voter approval, if necessary to allow each county listed in section 11(b) to comply with this subsection.

3. Any increase in the tax rate imposed pursuant to subsection 2 of this section shall be decreased if such decrease is approved by a majority of the voters of the county voting on such decrease. A decrease in the increased tax rate imposed under subsection 2 of this section may be submitted to the voters of a county by the governing body thereof upon its own order, ordinance, or resolution and shall be submitted upon the petition of at least eight percent of the qualified voters who voted in the immediately preceding gubernatorial election.

4. As used in this section, the terms "revenues lost" and "lost revenues" shall mean that revenue which each taxing

authority received from the imposition of a tangible personal property tax on all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments in the last full tax year immediately preceding the effective date of the exemption from taxation granted for such property under subsection 1 of this section, and which was no longer received after such exemption became effective.

The legislature has enacted implementing legislation to further detail the process for determining the rate of the replacement tax and the distribution of its proceeds. *See* Section 139.600, RSMo 2000.

Section 321.552--Substitution of Sales Tax for Property Tax

The Taney County Ambulance District may levy and collect property taxes. *See* Sections 190.010, 190.040, 190.041, 190.043, and 190.074, RSMo 2000. Section 321.552, RSMo Cum. Supp. 2002, provides that an ambulance district meeting certain criteria may choose to impose a sales tax and make an accompanying reduction in its property tax rate.

Specifically, Section 321.552, RSMo Cum. Supp. 2002, provides in pertinent part:

1. [Except in certain counties], the governing body of any ambulance or fire protection district may impose a sales tax in an amount up to one-half of one percent on all retail sales made in such ambulance or fire protection district which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo, provided that such sales tax shall be accompanied by a reduction in the district's tax rate as defined in section 137.073, RSMo. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law, except that no sales tax imposed pursuant to the provisions of this section shall be effective unless the governing body of the ambulance or fire protection district submits to the voters of such ambulance or fire protection district, at a municipal or state

general, primary or special election, a proposal to authorize the governing body of the ambulance or fire protection district to impose a tax pursuant to this section.

2. The ballot of submission shall contain, but need not be limited to, the following language:

“Shall ..... (insert name of ambulance or fire protection district) impose a sales tax of ..... (insert amount up to one-half) of one percent for the purpose of providing revenues for the operation of the ..... (insert name of ambulance or fire protection district) and the total property tax levy on properties in the ..... (insert name of the ambulance or fire protection district) shall be reduced annually by an amount which reduces property tax revenues by an amount equal to fifty percent of the previous year’s revenue collected from this sales tax?

☐ Yes

☐ No

If you are in favor of the question, place an “X” in the box opposite “Yes”.  
If you are opposed to the question, place an “X” in the box opposite “No”.”

3. If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the sales tax authorized in this section shall be in effect and the governing body of the ambulance or fire protection district shall lower the level of its tax rate by an amount which reduces property tax revenues by an amount equal to fifty percent of the amount of sales tax collected in the preceding year.

#### Analysis

The language of Article X, Section 6 imposes the replacement tax and provides for its distribution to taxing authorities such as the Taney County Ambulance District. Thus, the replacement tax is imposed and distributed independent of any property tax set by the District pursuant to its taxing authority under the provisions of Chapter 190, RSMo 2000. Indeed, this office has previously opined that a taxing authority may not voluntarily forgo the replacement tax revenue to which it is entitled under Article X, Section 6. *See* Opinion No. 44, Moseley, 1991. Accordingly, while the legislature may enact a law providing for abatement of the replacement tax (*see Consol. School Dist. No. 1 of Jackson County*, 936

S.W.2d at 102), an action by the District should not be construed to eliminate its replacement tax revenue unless a provision of law dictates that result.

In this instance, the law does not provide for the elimination of the District's replacement tax revenue. Section 321.552.1, RSMo Cum. Supp. 2002, states that an ambulance district may impose a sales tax, "provided that such sales tax shall be accompanied by a reduction in the district's tax rate as defined in section 137.073, RSMo." By referring to the "district's tax rate as defined in section 137.073, RSMo," the legislature excluded the replacement tax from reduction as a result of the adoption of a sales tax. Section 137.073.1(2), RSMo 2000, defines the term "tax rate" for purposes of Section 137.073 so that it: "[I]ncludes the tax rate for each purpose of taxation of property a taxing authority is authorized to levy without a vote and any tax rate authorized by election, including bond interest and sinking fund[.]" The replacement tax does not fit this definition and thus is not part of the "district's tax rate as defined in section 137.073, RSMo." The replacement tax is authorized and levied directly by the terms of Article X, Section 6, not by the "taxing authority" or by "election." This is apparent from the text of Article X, Section 6, which requires no action by any taxing authority and no election to impose the tax and, indeed, sets out in Article X, Section 6.3 a special procedure independent of any action by a particular taxing authority for reduction of the replacement tax.

In addition, Section 137.074.1, RSMo 2000, states:

For the purpose of determining any tax rate under section 137.073, or other applicable provisions of the statutes or constitution of this state, the tax revenue from any personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments which falls in the category of personal property exempted from taxation under subsection 1 of section 6 of article X of the Constitution of Missouri shall not be included in the prior year's tax revenues used in determining tax rates for use after the effective date of the exemption of such personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments.

This provision further demonstrates the legislature's intent that the pre-existing merchants' and manufacturers' tax was to be considered separate from the tax rates established pursuant to the provisions of Section 137.073. That reinforces the conclusion that the tax imposed by

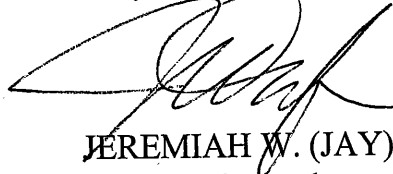
Honorable Maynard Wallace  
Page 7

Article X, Section 6 to replace the revenues of the pre-existing personal property tax should be considered separate from a tax rate set pursuant to the provisions of Section 137.073. Accordingly, the replacement tax is not a tax rate that must be reduced to accompany the adoption of a sales tax pursuant to Section 321.552, RSMo Cum. Supp. 2002.

#### CONCLUSION

An action by an ambulance district to impose a sales tax pursuant to Section 321.552, RSMo Cum. Supp. 2002, and make an accompanying reduction in its tax rate as defined in Section 137.073, RSMo 2000, thus setting that tax rate at zero, does not interfere with the district's entitlement to revenue from the replacement tax imposed pursuant to Article X, Section 6 of the Missouri Constitution.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jeremiah W. Nixon', is written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

CHARTER COUNTIES:  
COUNTY COLLECTOR:  
JACKSON COUNTY:  
TAX COLLECTIONS:

The Jackson County Collector lacks authority to  
waive interest or penalties assessed on  
delinquent real or personal property taxes.

OPINION NO. 80-2004

April 8, 2004

Carol Fischer, Director  
Missouri Department of Revenue  
Truman State Office Building, Room 670  
301 West High Street  
Jefferson City, MO 65101

Dear Ms. Fischer:

You asked our office whether the Jackson County Collector has authority to waive penalties and interest imposed on delinquent real or personal property taxes. For the reasons stated below, we conclude that the Jackson County Collector lacks such authority.

County officials or agencies possess only authority that is expressly granted or necessarily implied by law. *E.g.*, *State ex rel. O'Brien v. Roos*, 397 S.W.2d 578, 581-82 (Mo. 1966); *Barber v. Jackson County Ethics Comm'n*, 935 S.W.2d 62, 67 (Mo. App. W.D. 1996); *American Aberdeen Angus v. Stanton*, 762 S.W.2d 501, 503 (Mo. App. W.D. 1988). Accordingly, the Jackson County Collector does not have authority to waive penalties or interest unless applicable provisions of law expressly grant or necessarily imply that authority.

In considering the Jackson County Collector's authority, we first examine the Jackson County Charter. The Missouri Constitution allows charter counties to provide for the "form of the county government, . . . and for the exercise of all powers and duties of counties and county officers prescribed by the constitution and laws of the state." Mo. Const. art. VI, § 18(b). The Jackson County Charter provides for the Jackson County Executive to appoint the Director of the County Department of Revenue, who is responsible for "all duties and functions prescribed by law or this charter of the county assessor, the county collector, and the county treasurer." *Charter*, art. IV, § 1, § 5. The County Counselor, also appointed by

the Executive, has authority to “institute and prosecute all proceedings for collection of delinquent taxes.” *Charter*, art. V, § 7.<sup>1</sup>

In addition to the Charter, the Jackson County Code addresses the collection of delinquent taxes and the source of the Jackson County Collector’s authority. Section 2110 provides that:

It is hereby declared to be in the interest of the citizens and taxpayers of Jackson County that all taxes levied by law for county and other public purposes be promptly collected, that all delinquent taxes be fairly and promptly enforced and collected by all lawful means available to the collecting authority or his lawful agents or attorneys . . . .

Regarding the County Collector’s authority, § 502 of the Code provides: “The Manager of the Division of Finance shall assume all powers and duties, not otherwise specifically provided for by the Charter or by ordinance, previously imposed on or granted to the County Collector by the Constitution and Laws of the State of Missouri.” By this provision, the Manager of the Division of Finance has the authority granted to the County Collector under state law. According to the Jackson County Executive Branch’s organizational chart, the County Collector reports to the Director (Manager) of the Division of Finance, and the County Collector’s authority would flow from the authority granted to this Division Director.

We note that the Jackson County Charter gives the County Legislature authority to “[c]ompromise taxes as provided by law.” *Jackson County Charter*, art. II, § 16.8. However, by its terms this provision does not grant any authority to the Jackson County Collector to waive interest or penalties on taxes. In addition, we note that the Charter grants to the Jackson County Executive the authority to correct errors in assessments and tax records and that the Code specifies the types of errors that may be corrected. *Jackson County Charter*,

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<sup>1</sup>Cf. *State ex rel. St. Louis Shipbuilding & Steel Co. v. Smith*, 201 S.W.2d 153 (Mo. 1947); Mo. Att’y Gen. Op. 39 (1952). *Smith* suggests that an official with authority to sue to collect a tax has authority, by implication, to compromise interest and penalties imposed. We have not addressed the application of that principle in this opinion because it is clear from the Jackson County Charter that the authority to bring suit for delinquent taxes does not reside with the Jackson County Collector.



art. III, § 6.9; *Jackson County Code*, §§ 2050-2056. We recognize that correction of the types of acknowledged errors identified in the Code might result in a correction to the amount of taxes, interest, or penalties owed by a person or business, but we understand such a correction to be a matter that is different from the waiver of interest or penalties addressed by your opinion request.

In sum, we have found no provision of the Jackson County Charter or Code granting to the Jackson County Collector--either expressly or by necessary implication--the authority to waive penalties or interest imposed on delinquent real or personal property taxes. The most that might be said is that the Jackson County Collector would possess authority to waive penalties or interest if that authority were part of the powers otherwise granted to county collectors by state law.<sup>2</sup>

Accordingly, we have reviewed Missouri's statutes governing county collectors and the collection of delinquent taxes in first class charter counties. But we have not found any provisions that authorize the Jackson County Collector to compromise interest and penalties on delinquent taxes. The provisions of Chapter 52, titled "County Collectors," do not give collectors this authority. Furthermore, in general, county collectors have a duty to collect statutorily-imposed penalties; if they fail to collect these penalties on certain delinquent taxes, the director of revenue and county clerk must charge them with interest on the penalties due. Section 139.100.3.<sup>3</sup>

The statutory chapter addressing the collection of delinquent taxes in first class counties, Chapter 141, likewise does not give county collectors authority to waive interest or penalties imposed on delinquent taxes. Rather, § 141.020 provides that those laws that permit the compromise of taxes "shown on the back tax book or recorded list of delinquent lands and lots in the collector's office" shall authorize the "compromise of any judgment for taxes" after it has been rendered "and up to that time when the property shall be sold under execution." Such compromise is permitted "as authorized by the same officials and under the same conditions as set forth under existing law for the compromise of taxes." Section 141.020. Section 140.120 permits *county commissions* to compromise taxes owed under

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<sup>2</sup>Because we determine that neither the Jackson County Charter nor Code authorize the Jackson County Collector to waive interest or penalties on delinquent taxes, it is not necessary for us to determine whether any attempt in the Charter or Code to grant such authority to the Jackson County Collector would be valid.

<sup>3</sup>All statutory citations are to RSMo 2000.

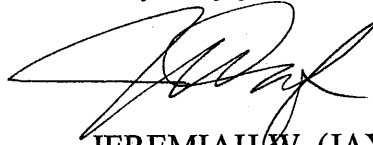
certain circumstances. This provision does not, however, permit county collectors to compromise taxes, penalties, or interest at their discretion. There are other statutory provisions that permit the waiver of penalties under certain circumstances, *see e.g.*, § 137.423, but none that we have identified that give the county collector this authority.

Therefore, we find no authority expressly granted or necessarily implied in state statutes for the Jackson County Collector to waive penalties or interest on delinquent real or personal property taxes.

#### CONCLUSION

The Jackson County Collector lacks authority to waive interest or penalties assessed on delinquent real or personal property taxes.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jeremiah W. Nixon', with a stylized flourish at the end.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

February 5, 2004

OPINION LETTER NO. 82-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to amendments to various provisions of the Constitution of Missouri concerning highways and transportation (version 1). A copy of the initiative petition that you submitted to this office on January 29, 2004, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure

[www.moago.org](http://www.moago.org)



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February 13, 2004

OPINION LETTER NO. 85-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to amendments to various provisions of the Constitution of Missouri concerning highways and transportation (version 2). A copy of the initiative petition that you submitted to this office on February 4, 2004, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure

APPROPRIATIONS: Subject to certain limitations based on Article III, Section 23 and Article II, Section 1 of the Missouri Constitution, the General Assembly's determination of the purpose for each appropriation as expressed in the plain language of the final bill is final and binding on all other state actors. The Commissioner of Administration may not certify, and the Treasurer may not pay, any expenditure of state funds except in furtherance of those purposes.

OPINION NO. 87-2004

March 25, 2004

Honorable Gary Nodler  
State Senator, District 32  
State Capitol Building, Room 433  
Jefferson City, MO 65101

Dear Senator Nodler:

This letter is in response to your request, dated February 3, 2004, for an opinion of this office concerning the effect of the General Assembly's designation of appropriations for specific purposes. Specifically, you asked:

- (a) Does the Governor have the constitutional authority to expend money on programs, which the legislature has specifically left unfunded, by the shifting of other appropriated and dedicated funds from other state programs to the unfunded program without legislative authority[?]
- (b) What are the constitutional limits on the Governor's authority to shift dedicated funds from an appropriation bill to another state program if the state program is not noted in the appropriation bill title and the program is not germane to any of the other programs in the appropriation bill[?]

The General Assembly has the power to enact any law not prohibited by the Missouri or United States Constitutions. *Three Rivers Junior College Dist. of Poplar Bluff v. Statler*, 421 S.W.2d 235, 238 (Mo. banc 1967). With respect to appropriations of public funds, the

Honorable Gary Nodler

Page 2

power of the General Assembly is clearly stated in the Missouri Constitution. *See* Mo. Const. art. IV, § 28. In exercising this authority, however, the Missouri Constitution requires the General Assembly to ensure that “[e]very appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose.” Mo. Const. art. IV, § 23.

In establishing the purposes for appropriations, the General Assembly must comport with certain constitutional limitations. The opinions of prior occupants of this office have repeatedly advised that “descent into minute detail [in establishing the purposes for appropriations] could be construed as substantive legislation and prohibited as such [under Article III, Section 23] or, depending upon the circumstances, may constitute a violation of the separation of powers clause in Article II, Section 1, [of the] Missouri Constitution.” Attorney General’s Opinion No. 23-1985 (collecting opinions and cases) (copy enclosed). Language included in the purpose of an appropriation, if found to violate these constitutional limitations, would be severable. *See* Attorney General’s Opinion No. 217-1974 (citing cases and opinion) (copy enclosed).

Once the General Assembly has fixed the purpose of an appropriation, that determination is final and binding on the rest of state government. *State ex inf. Danforth v. Merrell*, 530 S.W.2d 209, 213 (Mo. banc 1975). Article IV, Section 28 of the Missouri Constitution provides:

No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for that payment of money be incurred unless the commissioner of administration certifies it for payment and certifies that the expenditure is within the purpose as directed by the general assembly of the appropriation[.] (emphasis added)

With these constitutional principles as background, it seems clear that your questions must be resolved in light of the purposes of the appropriations relied upon by the Commissioner of Administration in certifying the expenditures that you find objectionable. As with any statute, these purposes will be drawn from the plain language employed in the bills, and resort to extrinsic evidence of the General Assembly’s unexpressed intent is generally not allowed. *Blue Springs Bowl v. Spradling*, 551 S.W.2d 596, 599 (Mo. banc 1977). If the expenditures in question are within the purposes of the appropriations upon which the Commissioner of Administration relied, the expenditure is likely to be deemed

Honorable Gary Nodler  
Page 3

lawful. If the purpose of the appropriations cited do not fairly authorize the expenditures, however, then the expenditure may be deemed unlawful. *See* Attorney General's Opinion No. 331-1974 (copy enclosed).

#### CONCLUSION

Subject to certain limitations based on Article III, Section 23 and Article II, Section 1 of the Missouri Constitution, the General Assembly's determination of the purpose for each appropriation as expressed in the plain language of the final bill is final and binding on all other state actors. The Commissioner of Administration may not certify, and the Treasurer may not pay, any expenditure of state funds except in furtherance of those purposes.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosures: Opinion No. 23-1985  
Opinion No. 217-1974  
Opinion No. 331-1974.



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
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February 27, 2004

OPINION LETTER NO. 89-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

On February 20, 2004, you submitted to us a summary statement for the constitutional initiative petition relating to highways and transportation (version 2). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

Shall the Missouri Constitution be amended to require that all revenues from the existing motor vehicle fuel tax (less collection costs) be used only for state and local highways, roads and bridges, and also require that vehicle taxes and fees paid by highway users be used only for constructing and maintaining the state highway system (less collection costs, refunds and highway patrol law enforcement costs), except that up to half of such vehicle taxes and fees, phased in over four years, will go into a state road bond fund to repay state highway bonds?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General





ATTORNEY GENERAL OF MISSOURI

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March 4, 2004

OPINION LETTER NO. 90-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of a proposed statutory initiative petition relating to electoral reform (version 1). A copy of the initiative petition that you submitted to this office on February 23, 2004, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

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March 4, 2004

OPINION LETTER NO. 91-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of a proposed statutory initiative petition relating to electoral reform (version 2). A copy of the initiative petition that you submitted to this office on February 23, 2004, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

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March 4, 2004

OPINION LETTER NO. 92-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of a proposed statutory initiative petition relating to electoral reform (version 3). A copy of the initiative petition that you submitted to this office on February 23, 2004, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

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March 4, 2004

OPINION LETTER NO. 93-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of a proposed statutory initiative petition relating to electoral reform (version 4). A copy of the initiative petition that you submitted to this office on February 23, 2004, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

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March 4, 2004

OPINION LETTER NO. 96-2004

The Honorable Claire C. McCaskill  
Missouri State Auditor  
224 State Capitol Building  
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated February 24, 2004, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal to amend various provisions of the Constitution of Missouri relating to highways and transportation (version 2). The fiscal note summary which you submitted is as follows:

The constitutional amendment has a zero net fiscal impact. The amendment increases funding for the Department of Transportation to be used for transportation purposes only and limits the use of highway user fee revenues by other state agencies. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON  
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March 4, 2004

OPINION LETTER NO. 99-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to amendments to various provisions of the Constitution of Missouri concerning highways and transportation (version 4). A copy of the initiative petition that you submitted to this office on February 26, 2004, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

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March 12, 2004

OPINION LETTER NO. 101-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

On March 10, 2004, you submitted to us a summary statement for the constitutional initiative petition relating to highways and transportation (version 4). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

Shall the Missouri Constitution be amended to require that all revenues from the existing motor vehicle fuel tax (less collection costs) be used only for state and local highways, roads and bridges, and also require that vehicle taxes and fees paid by highway users be used only for constructing and maintaining the state highway system (less collection costs, refunds and highway patrol law enforcement costs), except that up to half of such vehicle taxes and fees, phased in over four years, will go into a state road bond fund to repay state highway bonds?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon".

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

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March 12, 2004

OPINION LETTER NO. 102-2004

The Honorable Claire C. McCaskill  
Missouri State Auditor  
224 State Capitol Building  
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated March 10, 2004, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal to amend various provisions of the Constitution of Missouri relating to highways and transportation (version 4). The fiscal note summary which you submitted is as follows:

The constitutional amendment has a zero net fiscal impact. The amendment increases funding for the Department of Transportation to be used for transportation purposes only and limits the use of highway user fee revenues by other state agencies. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General





ATTORNEY GENERAL OF MISSOURI

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March 19, 2004

OPINION LETTER NO. 103-2004

The Honorable Claire C. McCaskill  
Missouri State Auditor  
224 State Capitol Building  
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated March 12, 2004, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 1). The fiscal note summary which you submitted is as follows:

The proposed statutory change would have a zero estimated fiscal impact to the state and local governments.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY  
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March 19, 2004

OPINION LETTER NO. 104-2004

The Honorable Claire C. McCaskill  
Missouri State Auditor  
224 State Capitol Building  
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated March 12, 2004, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 2). The fiscal note summary which you submitted is as follows:

The proposed statutory change would have a zero estimated fiscal impact to the state and local governments.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY  
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March 19, 2004

OPINION LETTER NO. 105-2004

The Honorable Claire C. McCaskill  
Missouri State Auditor  
224 State Capitol Building  
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated March 12, 2004, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 3). The fiscal note summary which you submitted is as follows:

The proposed statutory change would have a zero estimated fiscal impact to the state and local governments.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON  
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P.O. Box 899  
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March 19, 2004

OPINION LETTER NO. 106-2004

The Honorable Claire C. McCaskill  
Missouri State Auditor  
224 State Capitol Building  
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated March 12, 2004, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the statutory initiative petition relating to electoral reform (version 4). The fiscal note summary which you submitted is as follows:

The proposed statutory change would have a zero estimated fiscal impact to the state and local governments.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY  
65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

March 22, 2004

OPINION LETTER NO. 107-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

On March 15, 2004, you submitted to us a summary statement for the statutory initiative petition relating to electoral reform (version 1). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

Shall Missouri law be amended to eliminate the present winner-take-all method of choosing electors for president and vice president and instead require that electors be chosen as follows: two at-large electors allocated to the party or person that wins the statewide vote and the remaining electors elected by congressional district, the highest vote getter in each district to be that district's elector, with this provision to take effect February 1, 2005?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a circular stamp.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

March 22, 2004

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

OPINION LETTER NO. 108-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

On March 15, 2004, you submitted to us a summary statement for the statutory initiative petition relating to electoral reform (version 2). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

Shall Missouri law be amended to eliminate the present winner-take-all method of choosing electors for president and vice president and instead require that electors be chosen as follows: two at-large electors allocated to the party or person that wins the statewide vote and the remaining electors elected by congressional district, the highest vote getter in each district to be that district's elector, with this provision to take effect November 2, 2004?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

March 22, 2004

OPINION LETTER NO. 109-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

On March 15, 2004, you submitted to us a summary statement for the statutory initiative petition relating to electoral reform (version 3). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

Shall Missouri law be amended to eliminate the present winner-take-all method of choosing electors for president and vice president and instead require that electors be allocated based on the proportion of votes each presidential ticket receives statewide, with the electors required to vote for the candidates of the party that nominated them, this provision to take effect February 1, 2005?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



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JEFFERSON CITY

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P.O. Box 899  
(573) 751-3321

March 22, 2004

OPINION LETTER NO. 110-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

On March 15, 2004, you submitted to us a summary statement for the statutory initiative petition relating to electoral reform (version 4). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

Shall Missouri law be amended to eliminate the present winner-take-all method of choosing electors for president and vice president and instead require that electors be allocated based on the proportion of votes each presidential ticket receives statewide, with the electors required to vote for the candidates of the party that nominated them, this provision to take effect November 2, 2004?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a circular stamp.

JEREMIAH W. (JAY) NIXON  
Attorney General



COUNTY COMMISSIONERS:  
INCOMPATIBILITY OF OFFICES:  
SCHOOL BOARDS:

Under current applicable law, the offices of Camden County Commissioner and member of the School of the Osage R-II School Board are not incompatible because School of the Osage R-II School District belongs to Miller County rather than Camden County.

OPINION NO. 118-2004

September 21, 2004

Honorable W. James Icenogle  
Prosecuting Attorney  
County of Camden  
10 Courthouse, One Court Circle  
Camdenton, MO 65020

Dear Mr. Icenogle:

You have requested an opinion on a issue pertaining to the incompatibility of offices. Specifically, you asked:

Is it permissible for a person to serve on the Camden County Commission while at the same time serving as a member of the School of the Osage R-II School Board, which is located primarily within Miller County and appears to be a Miller County School District under applicable law?

To determine whether there is an incompatibility between two positions, the duties and responsibilities of the two offices must be compared. Past decisions "have turned on the question whether such duties are inconsistent, antagonistic, repugnant or conflicting as where, for example, one office is subordinate or accountable to the other." *State ex rel. McGaughey v. Grayston*, 163 S.W.2d 335, 339-40 (Mo. banc 1942).

We have previously opined that it is incompatible to simultaneously serve as a county commissioner and a member of a school board. See Attorney General's Opinion No. 84-2001. In Opinion 84-2001, we stated:

Members of a county commission have extensive duties, including those related to the appointment to school boards in case of multiple vacancies. See, for example, Section 162.261, RSMo 2000. Due to the extensive responsibilities of a county commission in overseeing school district reorganization, it would be incompatible for a county commission member to serve on a school board.

But that opinion did not address a situation in which the school district in question belonged to a different county than the one in which an individual served as county commissioner. That distinction is important because the duties we considered involved a county commissioner's authority with respect to a school district belonging to the commissioner's county. For example, with respect to school district reorganization plans, a school district with territory in more than one county is designated by the State Board of Education as belonging to the county containing the portion of the district with the highest assessed valuation. See Section 162.181, RSMo 2000. See also Sections 162.191 and 162.241, RSMo 2000. In addition, Section 162.261, RSMo Cum. Supp. 2003, provides that "if there are more than two vacancies at any one time [on a seven-director school board], the county commission upon receiving written notice of the vacancies shall fill the vacancies by appointment." Section 162.261 does not contain language specifically identifying which county commission would make such appointments in the case of a school district having territory in more than one county, but the terms of the statute contemplate that a single county commission would make the appointments. Reading Section 162.261 *in para materia* with other provisions of Chapter 162 calling for assignment of school districts to particular counties, we conclude that the commission of the county to which the school district belongs would possess the authority to make appointments to fill vacancies as envisioned in Section 162.261. See *Goldberg v. State Tax Comm'n*, 639 S.W.2d 796, 805 (Mo. 1982) (statutes dealing with the same subject matter should be read *in para materia*). Accordingly, we do not find duties of a county commissioner to be incompatible with serving on the board of a school district that belongs to a different county.

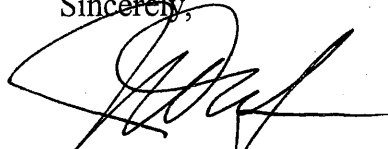
Your specific question addresses a situation in which an individual would serve as Camden County Commissioner while serving as a member of the School of the Osage R-II School Board. The materials submitted with your opinion request indicate that the School of the Osage R-II School District would belong to Miller County rather than Camden County. To cite one indicator as an example, materials published by the Missouri Department of Elementary and Secondary Education refer to School of the Osage R-II School District with the county code number for Miller County rather than Camden County.

Honorable W. James Icenogle  
Page 3

### CONCLUSION

It is the opinion of this office that under current applicable law the offices of Camden County Commissioner and member of the School of the Osage R-II School Board are not incompatible because School of the Osage R-II School District belongs to Miller County rather than Camden County.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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P.O. Box 899  
(573) 751-8321

June 3, 2004

OPINION LETTER NO. 120-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

You have submitted to us a summary statement for Senate Joint Resolution No. 29 submitted by the Missouri General Assembly. The summary statement, prepared pursuant to Section 116.160, RSMo, is as follows:

Shall the Missouri Constitution be amended so that to be valid and recognized in this state, a marriage shall exist only between a man and a woman?

Pursuant to Section 116.160, we approve the legal content and form of the proposed statement.

You have also submitted to us proposed fair ballot language statements for the same measure. The fair ballot language statements, prepared pursuant to Section 116.025, RSMo, are as follows:

A "yes" vote will amend the Missouri Constitution so that to be valid and recognized in this state, a marriage shall exist only between a man and a woman.

A "no" vote will not amend the Missouri Constitution in the manner described above.

This measure will have no impact on taxes.

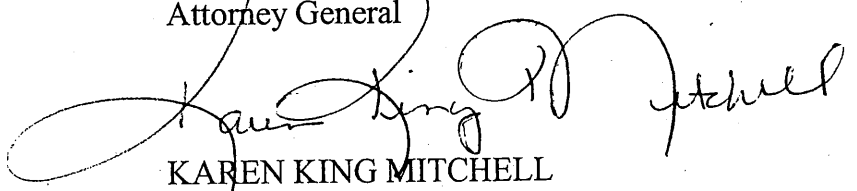
Honorable Matt Blunt  
Page 2

Pursuant to Section 116.025, we approve the legal content and form of the proposed fair ballot language statements.

Since our review of the summary statement and fair ballot language statements are mandated by statute, no action we take with respect to such review should be construed as an endorsement of the Senate Joint Resolution or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON  
Attorney General



KAREN KING MITCHELL  
Chief Deputy Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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ATTORNEY GENERAL

P.O. Box 899  
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May 28, 2004

OPINION LETTER NO. 121-2004

The Honorable Claire C. McCaskill  
Missouri State Auditor  
224 State Capitol Building  
Jefferson City, MO 65101

Dear Auditor McCaskill:

You have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment passed by the Missouri General Assembly (Senate Joint Resolution No. 29). A copy of the fiscal note summary which you submitted is attached.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the Senate Joint Resolution or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", is written over the typed name.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

June 23, 2004

OPINION LETTER NO. 126-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

You have submitted a proposed fair ballot language statement with respect to the initiative petition submitted by Doug Stone representing Missourians for Economic Opportunity, Inc. The fair ballot language statement, prepared pursuant to Section 116.025, RSMo, is as follows:

A "yes" vote will amend the Missouri Constitution to allow floating gambling facilities on or adjacent to the White River in Rockaway Beach, Missouri, subject to the same licensing and regulatory requirements that apply to all other floating gambling facilities in the State of Missouri. The revenues generated will be used to fund salary supplement grants for high quality teachers in priority schools and for capital improvements to education facilities in priority school districts.

A "no" vote will not amend the Missouri Constitution in the manner described above.

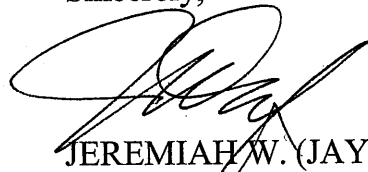
This measure will have no impact on taxes.

Pursuant to Section 116.025, we approve the legal content and form of the proposed fair ballot language statement.

Honorable Matt Blunt  
June 23, 2004  
Page 2

Since our review of the fair ballot language statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the initiative petition, or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over the printed name.

JEREMIAH W. (JAY) NIXON  
Attorney General



SCHOOL SUPERINTENDENTS:  
SUNSHINE BILL - SUNSHINE LAW:

A task force appointed by the Cape Girardeau School District's superintendent for the purpose of making budget proposals to the superintendent was a public governmental body within the meaning of the Sunshine Law so that meetings of the task force were subject to the requirements of the Sunshine Law.

OPINION NO. 129-2004

November 30, 2004

Honorable H. Morley Swingle  
Prosecuting Attorney of Cape Girardeau County  
Cape Girardeau County Courthouse  
100 Court Street  
Jackson, MO 63755

Dear Mr. Swingle:

You have requested an opinion on whether the provisions of Chapter 610, RSMo 2000,<sup>1</sup> or Missouri's Sunshine Law, apply to an advisory task force appointed by a school district superintendent. More specifically, you have posed the following question:

Whether a task force formed by a superintendent is a public governmental body for the purposes of the Sunshine Law of Missouri so that any meeting held by the task force is subject to Missouri's Sunshine Law.

We understand that this question arises out of facts in which the superintendent of the Cape Girardeau Public School District appointed a task force to recommend possible budget cuts. The task force then reported its findings to the superintendent.

The Sunshine Law expresses the public policy of this state that meetings, records, votes, actions, and deliberations of "public governmental bodies" are open to the public. See Section 610.011. Section 610.010(4) defines the term "public governmental body" as:

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<sup>1</sup>All references are to RSMo 2000 unless otherwise specified.

[A]ny legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:

....

(e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds ....

In interpreting statutes, we look first to the plain and ordinary meaning of the words enacted by the General Assembly. *Cox v. Dir. Of Revenue*, 98 S.W.3d 548, 550 (Mo. banc 2003). In addition, when interpreting the Sunshine Law, we are required to construe its provisions broadly to favor our state's public policy of openness. Section 610.011.1.

Applying the statute and case law to these specific facts, we conclude that the advisory budgetary task force appointed by the school superintendent was a public governmental body under Section 610.010(4)(e). The superintendent in this instance was himself a public governmental body, who in turn appointed a second public governmental body, an advisory committee, for the purpose of making expenditure recommendations.

Section 610.010(4)(e) identifies several types of committees that constitute public governmental bodies. We believe the second definition contained in that subdivision is particularly applicable here. The pertinent language identifies as a public governmental body: "any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds. . . ."

The task force at issue here meets the elements of this definition. As an initial matter, the superintendent's task force was an "advisory committee," regardless of the label used to describe it. Its organization and purpose earmark it as a "committee," which, in the term's ordinary meaning, signifies "a body of persons delegated to consider, investigate, or take action upon and usually to report concerning some matter or business." Webster's Third New International Dictionary 2372 (7th ed. 1993). It was formed for the purpose of advising the superintendent and indeed has provided such advice.

Further, the task force was “appointed by or at the direction” of one of the named public governmental body entities listed at the beginning of Section 610.010(4). The school district superintendent is a named entity for purposes of Section 610.010(4), because the superintendent is an “administrative . . . entity created by order or ordinance of any political subdivision or district.” Section 610.010(4).

Specifically, the position of superintendent is an administrative entity created by order of the Cape Girardeau School District. Section 168.201 permits school districts such as Cape Girardeau to hire a superintendent. Pursuant to that authority, the Cape Girardeau School District has created the position of superintendent and identified its responsibilities through orders that are codified in the Cape Girardeau School District Policy Manual, a relevant portion of which is attached to this opinion. Specifically, the Policy Manual authorizes the position of school superintendent and provides that the position shall be the “chief executive officer of the Board of Education and the administrative head of all divisions and departments of the Cape Girardeau School District,” among other things. This represents an “order” of the School District as that term is commonly understood. *See Webster’s Third New International Dictionary* 1588 (7th ed. 1993) (“a rule or regulation used by a competent authority”). The terms of the School District’s order identify the superintendent as an “administrative” entity and, indeed, the responsibilities and duties assigned to the superintendent by the order are those of an administrative entity. Thus, the superintendent of schools is a public governmental body as contemplated by Section 610.010(4).

This conclusion is not altered by the fact that the superintendent is a single official. *MacLachlan v. McNary*, 684 S.W.2d 534, 537 (Mo.App. E.D. 1984). Indeed, the circumstances addressed in your opinion request are similar to those addressed by the Court of Appeals in *MacLachlan*. In that case, the St. Louis County Executive established an annexation study commission and the Court considered whether that commission was a public governmental body on the grounds that it was a committee appointed by another public governmental body. 684 S.W.2d at 536-37. The Court rejected arguments that the St. Louis County Executive alone could not constitute a public governmental body. *Id.* at 537. The court stated:

Black’s Law Dictionary defines entity as including a “person” or “governmental unit.” While a single member body cannot have meetings, it can have records. One aspect of the Sunshine Law is that public records be open. Thus, it is not inconsistent to hold a single member body as a governmental entity.

*Id.* The definition of “public governmental body” largely hinges on whether the body, or individual, has either the power to govern or acts as an administrative decision-maker with determinations affecting the public. *Colombo v. Buford*, 935 S.W.2d 690, 698 (Mo.App. W.D. 1996); *Tipton v. Barton*, 747 S.W.2d 325, 329 (Mo.App. E.D. 1988). As a public governmental body, a

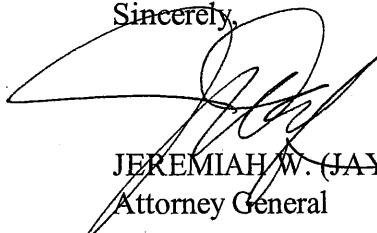
superintendent is capable of creating other public governmental bodies under Section 610.010(4)(e) in the form of committees or advisory committees.

Finally, the task force in this instance was appointed specifically for the purpose of making recommendations for expenditures of public funds to a public governmental body's chief administrative officer. This reporting requirement meets the last element set out in Section 610.010(4)(e) for the definition of public governmental entity advisory committees. Here, the superintendent specifically charged the task force with the duty of making budgetary proposals, which were reported to him when completed. Such budgetary proposals necessarily involve recommendations on the expenditures of public funds. In addition, the language of the School District's orders contained in the Policy Manual and the nature of the responsibilities assigned to the superintendent illustrate that he is the School District's chief administrative officer.

#### CONCLUSION

A task force appointed by the Cape Girardeau School District's superintendent for the purpose of making budget proposals to the superintendent was a public governmental body within the meaning of the Sunshine Law so that meetings of the task force were subject to the requirements of the Sunshine Law.

Sincerely,



JEREMIAH W. (JAY) NIXON  
Attorney General

attachment

## SCHOOL SUPERINTENDENT

The superintendent of schools shall be the chief executive officer of the Board of Education and the administrative head of all divisions and departments of the Cape Girardeau School District. The superintendent shall be responsible to the Board for the execution of its policies, rules and regulations. The superintendent shall be the representative of the Board and the channel through which all directives from the Board to its employees or students shall be communicated. The superintendent may also give directives, which shall be valid until disapproved by the Board, for the management of the school district to employees and students on points not covered by the adopted policies, rules and regulations.

The superintendent shall be held accountable to the Board for all aspects of administering to the school district. The execution of all decisions made by the Board concerning the internal operation of the school district shall be delegated to the superintendent. The superintendent shall then be responsible for the delegation of responsibility and authority for the operation of the various functions of the district.

\* \* \* \* \*

***Note: The reader is encouraged to review administrative procedures and/or forms for related information in support of this policy area.***

Adopted: 08/09/1993

Legal Refs: §§ 168.191, .201, RSMo.

Cape Girardeau School District, Cape Girardeau Missouri



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

August 20, 2004

OPINION LETTER NO. 135-2004

The Honorable Matt Blunt  
Missouri Secretary of State  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt:

You have submitted a proposed fair ballot language statement with respect to the initiative petition relating to highways and transportation and submitted by Rodney Gray. The fair ballot language statement, prepared pursuant to Section 116.025, RSMo, is as follows:

A "yes" vote will amend the Missouri Constitution to require that all revenues from the existing motor vehicle fuel tax (less collection costs) be used only for constructing, reconstructing, maintaining and repairing state and local highways, roads, and bridges. It will also require that the proceeds from vehicle taxes and fees paid by highway users (less collection costs, refunds, and highway patrol law enforcement costs) be used only for constructing and maintaining the state highway system, except up to half of the vehicle taxes and fees, phased in over four years, will go into a state road bond fund to repay state highway bonds.

A "no" vote will not amend the Missouri Constitution in the manner described above.

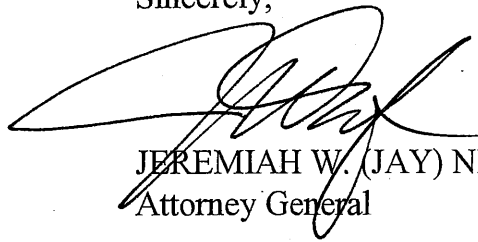
The constitutional amendment will have no impact on taxes.

Honorable Matt Blunt  
Page 2

Pursuant to Section 116.025, we approve the legal content and form of the proposed fair ballot language statement.

Since our review of the fair ballot language statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the initiative petition, or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. (Jay) Nixon", is written over the printed name and title.

JEREMIAH W. (JAY) NIXON  
Attorney General